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*Wisconsin State Senate*

**Senate Committee on Veterans and Military Affairs, Biotechnology and Financial  
Institutions**

**Testimony of Senator Jim Sullivan, March 10, 2010**

Thank you committee members for allowing me to speak on behalf of SB 587, relating to commercial real estate liens and recording a correction instrument and a lis pendens.

SB 587 makes a series of changes in the process of obtaining and terminating a commercial real estate lien. Currently, a real estate broker must place a lien on commercial property prior to closing to ensure payment of the commission at closing. The broker must file with the register of deeds both intent of a possible lien 30 days prior to closing and the actual lien three days before closing.

Wisconsin is the only state that requires the filing of intent of a possible lien and the actual lien prior to the payment of a commission or other compensation. This is causing confusion between the broker and the client and is an administrative burden for brokers and the courts.

SB 587 streamlines the lien filing process by replacing the "Notice of Intent of a Possible Lien" requirement with a "Notice of Interest" requirement. The "Notice of Interest" will be valid for up to 24 months from the date of filing. The bill also makes sure the property owner knows a broker has the authority to file a lien if commission is not paid and would allow a broker to file the lien up to 30 days after closing.

SB 587 also changes the way employees of Wisconsin title agents are able to correct errors on documents recorded by the Register of Deeds. The bill would allow agents to correct errors through the use of an Affidavit of Correction, a process that was routinely used until a 2007 Wisconsin Court of Appeals court struck down the practice.

Following my testimony you will hear from representatives in the commercial real estate and land title fields. They will speak in more detail about why the proposed changes in SB 587 will improve the process of filing commercial liens and correcting errors on documents recorded by the Register of Deeds.

Thank you for the opportunity to speak today about SB 587. I hope I have earned your support. I will be happy to answer any questions you may have.

**Senate Bill 587**  
**Senate Committee on Veterans and Military Affairs, Biotechnology and**  
**Financial Institutions**

**Testimony of J. Bushnell Nielsen**  
**Hearing date March 10, 2010**

Senators, my name is Bush Nielsen. I am a real estate lawyer and a partner at Reinhart Boerner Van Deuren in Waukesha. I have 29 years of experience in legal issues about the title to real estate.

This bill cures three problems, all relating to real estate liens and titles. I assisted the various associations who gave input into the three components of this bill.

The first part of the bill would create a new law, 706.085, which would allow deeds and mortgages that contain simple mistakes to be fixed by affidavits signed by seller, buyer, the drafter of the instrument, or the person who closed the transaction. We need such a law, because it is cumbersome and expensive to fix a deed or mortgage after the fact. People die, move away, become uncooperative, can't be found or want money just to sign a document that cures a simple error, such as the name of the subdivision in which the property is located.

A similar law was repealed about 40 years ago, for reasons that no one can remember. The issue came up in a recent appeals court case called *Smiljanic*. I represented Doug Smiljanic in that case. In that case, a deed had been fixed by an affidavit 50 years ago. Everyone involved in the sale was dead. The court of appeals held that, since there is no statute allowing a deed to be fixed by an affidavit, the only way to fix it would be to have a lawsuit. We had a lawsuit before the court, and still it would not fix the deed. Doug Smiljanic lost his access to a very desirable lake, for which he had paid a lot of money.

The Court of Appeals invited the legislature to act to fill this void. The important ruling in *Smiljanic* was that the only way to fix a deed is with a court action, because there is no law that provides another method. This bill would create that other method.

The associations that worked on this part of the bill included the State Bar, the Wisconsin Realtors Association, the Wisconsin Registers of Deeds Association, the Wisconsin Real Property Listers Association, and the group of which I am a member, the Wisconsin Land Title Association. We spent many days in meetings arriving at a consensus about how affidavits of correction should work.

The second segment of this bill begins on page 6 at section 2. It would amend an existing law, 779.32, which establishes a commercial real estate broker's right to

place a lien on property on which the broker is owed a commission. This bill would revise the existing law.

As the law is currently drafted, the notice requirements are so difficult that, in my experience, it is almost impossible for a real estate broker to actually use the law to claim a lien. Commercial real estate brokers sometimes get stiffed on their commissions. I have had to advise several brokers that they lost their lien rights before they could file liens in order to get paid. A commercial broker may only work on two or three deals a year. My brother-in-law is a commercial broker. If he gets three commission checks a year, that is a good year. If he gets stiffed on one of those deals, his family suffers.

The Wisconsin Land Title Association worked with the Wisconsin Realtors Association to reach agreement on revisions to the law to make the notice provisions easier to comply with, while still protecting property owners from the threat of liens that are not warranted. WLTA supports the bill.

The third part of this bill (beginning with section 24 on page 12) cures a small but deadly problem with the procedure for getting rid of roads that are not used by the public. We have an ancient law about vacating streets in subdivisions. The circuit court must enter an order vacating a street dedicated in a subdivision plat. A law in the lis pendens chapter, 840.11(2), says that a notice of the lawsuit must be recorded when the lawsuit is filed to vacate the street. It says that, if the lis pendens is not recorded, the court order is void.

In a lawsuit I handled for a client, Judge Ehlers in Door County had signed an order vacating a certain street that was not needed for access any more. Later, a very able lawyer, representing a neighbor, filed suit to undo the vacation order, because someone (not me) forgot to record a lis pendens. His client, the neighbor, knew all about the street vacation at the time. A lis pendens' sole purpose is to give notice of lawsuits to buyers and lenders. However, Judge Ehlers, in the second case, felt obligated to void his earlier judgment, because the statute says a vacation order is VOID if the lis pendens is not recorded.

This bill will fix the law so that it says what the legislature originally intended, in my opinion. It would now say that a lis pendens is to be recorded, but the order vacating a street can only be attacked by a person who bought land that would have used the road, and who bought without notice of the lawsuit that was pending that would take away that access street.

The three components of this bill are all important changes to improve our laws that affect home ownership, based on recognized deficiencies in current law. I ask the Senators to vote in support of SB 587. Thank you.

**Senate Bill 587**  
**Senate Committee on Veterans and Military Affairs, Biotechnology and**  
**Financial Institutions**

**Testimony of Craig Haskins**  
**Hearing date March 10, 2010**

My name is Craig Haskins. I am the Executive Vice President of Knight-Barry Title, which is a 156 year old privately held family company. We have 12 offices in Wisconsin and 130 employees throughout the State. I believe our company may be the largest title agency in Wisconsin. With that said everyday our title examiners find real estate documents with minor errors. Many of these errors can hold up the ability of the homeowner to sell their home or refinance their mortgage.

In the past few years following the *Smiljanic decision* referenced in the testimony of Bush Nielsen, our remedies to fix these minor errors have been to either have the homeowner hire a lawyer to ask the Court to repair the error; ignore the minor error and leave the public records in disorder; or have all of the parties to the initial closing re-execute the documents. This last option is very difficult if the previous owner has moved to Florida – or worse – has died.

Attached are 14 errors that are easily cured with the new law. I'd like to take a couple minutes to discuss a couple of them.

*(Please see the attached handout).*

As for the commercial broker lien section of the bill, the main issue from my perspective is that title companies facilitate the closing of many commercial transactions. In preparation of the closing documents, many times we are not aware of the existence of a broker if the seller and/or buyer are attempting to stiff the broker. This law simply gives notice to the public well in advance of the closing that the broker has an interest in the property in the form of its listing contract. This notice is key to the preparation of the closing documents and assures that the brokers interest is addressed prior to or at the closing.

Thank you.

# Corrective Instrument Analysis

September 30, 2009

By: Cheri Hipenbecker and Craig Haskins

Knight-Barry Title, Inc.  
330 E. Kilbourn Ave, Suite 925  
Milwaukee, WI 53202  
(414) 727-4545

<b>0000679</b> Document Number	STATE BAR OF WISCONSIN FORM 1 - 2010 <b>WARRANTY DEED</b>	DOC # 2010536 Recorded JAN. 11, 2005 AT 06:07PM
<p>This Deed, made between <u>Glenn F. Nelson, Jr.</u> Grantor, and <u>Harvey B. Rieckoff and Sandra J. Rieckoff husband and wife</u> Grantee. Grantor, for a valuable consideration, convey to Grantee the following described real estate in <u>Racine</u> County, State of Wisconsin (the "Property") (if more space is needed, please attach addendum):</p> <p>Lot 6, Block 1, Briar Hills, being a part of the Northeast 1/4 of the Southwest 1/4 and the Northwest 1/4 of the Southeast 1/4 of Section 31, Township 4 North, Range 23 East. Said land being in the Town of Caledonia, County of Racine, State of Wisconsin.</p>		
<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 60%;">         Mr. Nelson inadvertently failed to indicate his marital status which is required under 706.02(1)(f)       </div>		
<div style="text-align: right;">   <b>JAMES A. LAMIG</b>          RACINE COUNTY          REGISTER OF DEEDS          Fee Amount: \$11.00          Transfer Fee: \$876.00  </div>		
<div style="border: 1px solid black; padding: 5px;">         Recording Area          Name and Return Address  <b>Harvey and Sandra Rieckoff</b>          3554 Cranberry Lane          Racine, WI 53404       </div>		

Appeals Court Solution	Corrective Instrument Solution
Execution of a new deed or the commencement of a lawsuit to prove the grantor's marital status at the time of the conveyance.	A person with personal knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which corrects or clarifies a party's marital status.  <i>Proposed §§706.085(2)(b) and 706.085(1)(b)(2), Wis. Stats.</i>

0000806  Document Number	STATE BAR OF WISCONSIN FORM 3 - 1999 <b>QUIT CLAIM DEED</b>	DOC # 2023200 Recorded APR. 08, 2005 AT 05:11PM  <div style="text-align: center;">           JAMES A LUDWIG          RACINE COUNTY          REGISTER OF DEEDS          Fee Report: \$11.00          Fee Exempt 77.25-161  </div>
<p>This Deed, made between <u>Scott J. Anderson, a single person</u>, Grantor, and <u>Kenneth Scott Anderson, a married person</u>, Grantee.</p> <p>Grantor quit claims to Grantee the following described real estate in <u>Racine County, State of Wisconsin</u> (If more space is needed, please attach addendum):</p> <p>Lot 12, Block 2, Wickham's Addition, according to the recorded plat thereof. Said land being in the City of Racine, County of Racine, State of Wisconsin.</p>		Recording Area  Name and Return Address Kenneth Scott Anderson 250 Wickham Blvd Racine, WI 53405
<div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;">         The drafter of the deed inadvertently identified Mr. Anderson as a married person when in fact Mr. Anderson was a single person       </div>		

Appeals Court Solution	Corrective Instrument Solution
Execution of a new deed signed by the grantor or the commencement of a lawsuit to prove the grantee's marital status at the time of the conveyance.	A person with personal knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which corrects or clarifies a party's marital status.  <i>Proposed §§706.085(2)(b) and 706.085(1)(b)(2), Wis. Stats.</i>

State Bar of Wisconsin Form 5-2003 <b>PERSONAL REPRESENTATIVE'S DEED</b>	
Document Number	Document Name
<b>THIS DEED, made between <u>Linda Yarber</u></b> <b>as Personal Representative of the estate of <u>Senja Myhre</u></b> <b>("Decedent"), ("Grantor," whether one or more), and <u>Dorothy A. Benes, an</u></b> <b>unmarried person</b>	
<p>("Grantee," whether one or more).            Grantor conveys to Grantee, without warranty, the following described real estate,            together with the rents, profits, fixtures and other appurtenant interests, in  <u>Kenosha</u> County, State of Wisconsin ("Property") (if more space is            needed, please attach addendum):  <u>South 63 feet of Lot 5, Block 9, Petersdorf Subdivision, of Block 9 and 10 in Fisk's</u>  <u>Addition to the City of Kenosha, Wisconsin, in the Southwest 1/4 of Section 3,</u>  <u>Township 2 North, Range 23 East of the Fourth Principal Meridian. Said land</u>  <u>being in the City of Kenosha, County of Kenosha, and State of Wisconsin.</u></p>	
<p style="text-align: center;">The correct description should have referenced "Fred Petersdorf" subdivision and not simply "Petersdorf" subdivision</p>	

RECORDED  
1458770  
At Kenosha County, Kenosha, WI 53140  
Lette E., Principal, Register of Deeds  
on 11/14/2005 at 3:15PM  
\$212.00  
RECORDED

Recording Area

Name and Return Address  
Ms. Dorothy A. Benes  
4200 Franklin Ave.  
Western Springs, IL 60558

12-223-31-359-0018

Parcel Identification Number (PIN)

This is homestead property.  
 (is) (is not)

Appeals Court Solution	Corrective Instrument Solution
<p>Execution of a new deed signed by the grantor or the commencement of a law suit to correct the name of the subdivision.</p>	<p>A person with personal knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which corrects the legal description in a conveyance, including a distance; angle; direction; bearing; chord; lot, block, unit, or building number or letter; appurtenant easement; section number; township name or number; municipality, county, or state name; range number or meridian; certified survey map number; or subdivision or condominium name.</p> <p><i>Proposed §§706.085(2)(b) and 706.085(1)(a), Wis. Stats.</i></p>



Document Number	STATE BAR OF WISCONSIN FORM 3 - 1999 <b>QUIT CLAIM DEED</b>	2034606 6/21/05
<p>This Deed, made between <u>Brian L. Gustin and Vicki A. Gustin</u>, husband and wife, Grantor, and <u>Melissa A. Gustin and Eric L. Martin</u>, both single people, Grantee.</p> <p>Grantor quit claims to Grantee the following described real estate in Racine County, State of Wisconsin (if more space is needed, please attach addendum):</p> <p>Lot 7, Block 42, Original Plat of Racine, as surveyed by Moses Villas, according to the recorded plat thereof. Said land being in the City of Racine, County of Racine, State of Wisconsin.</p>		
<p>The drafter inadvertently used the wrong middle initial for Eric</p>		
Recording Area		<p>Name and Return Address</p> <p>Melissa Gustin and Eric Martin 1408 N. Wisconsin St. Racine, WI. 53402</p>

Appeals Court Solution	Corrective Instrument Solution
Execution of a new deed signed by the grantor or the commencement of a lawsuit to prove the grantee's middle name.	A person with personal knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which corrects or clarifies a party's name, including the spelling of the name; a first or middle name or initial; a name suffix, such as senior or junior; alternate names by which the party is known; or a description of an entity as a corporation, company, or similar identifier.
	Proposed §§706.085(2)(b) and 706.085(1)(b)(1), Wis. Stats.

Spelled out properly. But numbers in parentheses are incorrect.

**Exhibit A**

Commencing at the Northeast corner of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section Thirty-five (35), Township Thirteen (13) North, Range Twenty-one (21) East, running thence South 03 degrees 20 minutes 00 seconds West, Eighty-eight and Six Tenths (88.6) feet, thence North 89 degrees 20 minutes 00 seconds West, Two Hundred Forty-three and Five Tenths (243.5) feet more or less to the shore of Random Lake, thence Northeasterly One Hundred Twenty (120) feet along said shore to the Southwesterly corner of Lot One (1), Block One (1), Evergreen Park Subdivision, thence South 89 degrees 20 minutes 00 seconds East, One Hundred Sixty-five and six tenths (65.6) feet along the South line of said Lot One (1) to the point of beginning, said tract being in the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section Thirty-five (35), Township Thirteen (13) North, Range Twenty-one (21) East, TOGETHER WITH any right, title and interest that Grantors have in that certain road easement as in agreement between Wilmer T. Orth, as Executor of Last Will and Testament of Michael Orth, Jr. deceased to Sylvia Orthweber dated January 12, 1962 and recorded January 25, 1962 in Volume 14 of Contracts, on pages 331-333, as Document No. 797126.

**Appeals Court Solution**

Execution of a new deed or the commencement of a lawsuit to confirm which measurement is correct.

**Corrective Instrument Solution**

A person with personal knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which corrects the legal description in a conveyance, including a distance; angle; direction; bearing; chord; lot, block, unit, or building number or letter; appurtenant easement; section number; township name or number; municipality, county, or state name; range number or meridian; certified survey map number; or subdivision or condominium name.

*Proposed §§706.085(2)(b) and 706.085(1)(a), Wis. Stats.*

<b>MORTGAGE</b>	
<p><b>DOCUMENT NUMBER:</b></p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%; text-align: center;"> <p>The lender inadvertently attached the completely wrong legal description</p> </div> <p><b>RETURN ADDRESS:</b>            Bank of Elmwood            2704 Lathrop Avenue            Racine, WI 53408</p> <p><b>PARCEL I.D. NUMBER:</b> 61-151-03-27-12-236-260</p>	<div style="text-align: right;"> <p><b>JAMES A. LADWIG</b>              RACINE COUNTY              REGISTER OF DEEDS              Fee Agent: \$27.00</p> </div>
<p><b>MAXIMUM LIEN.</b> The lien of this Mortgage shall not exceed at any one time \$113,000.00.</p> <p><b>THIS MORTGAGE</b> dated March 31, 2006, is made and executed between <b>BRANDY L STORK</b>, whose address is 1521 Windsor Way Unit 1, RACINE, WI 53406 (referred to below as "Grantor") and Bank of Elmwood, whose address is 2704 Lathrop Avenue, Racine, WI 53408 (referred to below as "Lender").</p> <p><b>GRANT OF MORTGAGE.</b> For valuable consideration, Grantor mortgages and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; privileges, hereditaments, easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in unlifted with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Racine County, State of Wisconsin:</p> <p style="text-align: center;"><b>See See Attached Legal Description, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.</b></p>	

Appeals Court Solution	Corrective Instrument Solution
<p>Execution of a new mortgage or the commencement of a lawsuit to confirm the correct legal description.</p>	<p>If the Lender and Grantor intended to encumber two parcels owned by the Grantor, and only one parcel was shown on the Mortgage, then <u>only</u> Brandy L. Stork, as Grantor, may sign the correction instrument adding the 2<sup>nd</sup> parcel to the Mortgage which correctly conveys other land. <i>Proposed §706.085(2)(b)(3)(b), Wis. Stats.</i></p> <p>If the Grantor (Brandy L. Stork) did not own the property described in the recorded mortgage, then a person with knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument corrects the legal description in a conveyance, including a distance; angle; direction; bearing; chord; lot, block, unit, or building number or letter; appurtenant easement; section number; township name or number; municipality, county, or state name; range number or meridian; certified survey map number; or subdivision or condominium name. <i>Proposed §§706.085(2)(b) and 706.085(1)(a), Wis. Stats.</i></p>

Document Number	State Bar of Wisconsin Form 1-2003 <b>WARRANTY DEED</b>	<div style="text-align: right;"> <b>0843652</b>  <b>RONALD A. VOIGT</b>  <b>OSHAUKEE COUNTY</b>  <b>REGISTER OF DEEDS</b>  <b>PORT WASHINGTON, WI</b>  <b>TID: 33639</b> </div> <div style="text-align: right;"> <b>RECORDED ON</b>  <b>06/15/2006 01:34PM</b> </div> <div style="text-align: right;"> <b>REC FEE: 15.00</b>  <b>TRANS FEE: 1448.00</b>  <b>PAGES: 3</b>  <b>EXEMPT #: 0</b> </div>
THIS DEED, made Between <u>Nick R. Didier, Jr., Peter J. Didier and Patricia L. Didier, husband and wife and William G. Didier and Connie M. Didier, husband and wife</u>		
("Grantor," whether one or more), and <u>Bay Hill Property LLC</u>		
("Grantee," whether one or more).		
Grantor for a valuable consideration, conveys to Grantee the following described real estate, together with the rents, profits, fixtures and other appurtenant interests, in <u>Ozaukee</u> County, State of Wisconsin ("Property") (if more space is needed, please attach addendum):		
<b>See Attached Exhibit A.</b>		
The Grantors inadvertently included land they already sold years prior in this deed with a large amount of other land		
Recording Area Name and Return Address <u>Mike Didier</u> <u>110 E. Grand Ave</u> <u>Port Washington, WI 53074</u>		<div style="font-size: 1.5em; font-weight: bold;">\$15 / P</div>
<div style="text-align: right;"> <b>07-030-01-013.00 *</b>          Parcel Identification Number (PIN)       </div>		
This <u>is not</u> homestead property. (is) (is not)		

Appeals Court Solution	Corrective Instrument Solution
Execution of a new deed signed by grantee back to the actual owner of the erroneously conveyed property, or the commencement of a lawsuit to judicially reform the deed to remove the parcel in question.	If a parcel is being removed from a conveyance that also correctly conveys other land, <u>only</u> the grantee may sign a correction instrument removing the erroneously conveyed parcel.
	<i>Proposed §706.085(2)(b)(3)(c), Wis. Stats.</i>

1704198

**M&I Mortgage Corp.**

Document Number

**ASSIGNMENT OF MORTGAGE**

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 778 North Water Street, Milwaukee, WI 53202, does hereby grant, sell, assign, transfer and convey, unto

Wisconsin Partnership for Housing Development, Inc., a corporation organized and existing under the laws of the Wisconsin (herein "Assignee"), a certain Mortgage dated April 14, 2005 made and executed by Steven D Quam and Jessica L. Kernenway single persons

to and in favor of M&I Marshall and Isley Bank upon the following described property situated in Rock County, State of Wisconsin

**RECORDED**  
2005 APR 25 PM 1 46  
RANDAL LEYES  
REGISTER OF DEEDS  
ROCK CO WI 53545

Record and Return to:  
Wisconsin Partnership for Housing Development, Inc.  
121 South Pinckney Street  
Madison, WI 53703

221-157004  
(Parcel Identifier Number)

☒ If checked here, real estate description continues or appears on attached sheet.

Such Mortgage having been given to secure payment of \$ 5,000.00 Five Thousand and no/100 which Mortgage is of record in Book, Volume or Liber No. 1704198 of the Rock County, State of Wisconsin, together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Mortgage.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever, subject only to the terms and conditions of the above-described Mortgage.

IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Mortgage on April 14, 2005

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attest

M&I Mortgage Corp.

By Louise A. Powers  
Louise A. Powers  
Asst Vice President  
as agent for M&I Marshall and Isley Bank

The Register of Deeds hand-wrote in the incorrect document number

State of Wisconsin

#### Appeals Court Solution

Execution of a new assignment by the assignee lender or the commencement of a lawsuit to reform the assignment.

#### Corrective Instrument Solution

A person with knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which corrects the recording data for an instrument referenced in the conveyance.

Proposed §§706.085(2)(b) and 706.085(1)(b)(7), Wis. Stats.

# MORTGAGE

DANE COUNTY  
REGISTER OF DEEDS

DOCUMENT #  
4043100

04/18/2005 03:52:52PM

DOCUMENT NUMBER

NAME & RETURN ADDRESS  
M&I Mortgage Corp.  
ATTN: Final Documentation Dept.  
P.O. Box 478  
Milwaukee, WI 53201-0478

Trans. Fee:  
Exempt #:

Rec. Fee: 45.00  
Pages: 18

PARCEL IDENTIFIER NUMBER  
251-0710-034-0305-4

001130

[Space Above This Line For Recording Date]

The lender recorded this mortgage without page six

## DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

### Appeals Court Solution

Execution of a new mortgage or the commencement of a lawsuit to reform the mortgage to include the missing page.

### Corrective Instrument Solution


A person with knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which adds, corrects or clarifies information in a conveyance other than a legal description.

*Proposed §§706.085(2)(b) and 706.085(1)(b),  
Wis. Stats.*

State Bar of Wisconsin Form 5-2003 <b>PERSONAL REPRESENTATIVE'S DEED</b>		1807785 SHEBOYGAN COUNTY, WI RECORDED ON 09/07/2006 01:03PM ELLEN R. SCHLEICHER REGISTER OF DEEDS  RECORDING FEE: 11.00 TRANSFER FEE: 388.50 EXEMPTION #  STAFF ID 9 TRANS # 86253 # OF PAGES: 1
Document Number	Document Name	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> Recording Area  Name and Return Address  <b>Daniel Panzer, Sr.</b>  <b>W2940 County Road C</b>  <b>Sheboygan Falls, WI 53085</b> </div> <div style="border: 1px solid black; padding: 5px;"> 59026388660 </div>
THIS DEED, made between <u>Wells Fargo Bank, N.A.</u>		
as Personal Representative of the estate of <u>Elizabeth L. Pax</u>		
"Decedent"), ("Grantor," whether one or more), and <u>Daniel Panzer, Sr., a single person</u>		
"Grantee," whether one or more).		
Grantor conveys to Grantee, without warranty, the following described real estate, together with the rents, profits, fixtures and other appurtenant interests, in <u>Sheboygan</u> County, State of Wisconsin ("Property") (if more space is needed, please attach addendum):		<div style="border: 1px solid black; padding: 5px;"> on Number (PIN)  lead property. </div>
Part of the Northeast ¼ of the Southeast ¼, Section 27, Township 15 North, Range 22 East, the Town of Sheboygan Falls, Sheboygan County, Wisconsin;		
Commencing in the center line of State Trunk Highway 23, 638.1 feet Northwestery of the intersection of the centerline of said highway with the East line of Section 27, Township 15 North, Range 22 East, the Town of Sheboygan Falls, Sheboygan County, Wisconsin;		
thence North 50°32' East, along the centerline of said highway; thence North 49°05' West, 395.3 feet; thence South 51°05' East, 240.4 feet, to the place of beginning; and		
conveyed in Warranty Deed recorded in Volume 227, Page 255, as Document No. 1101225.		

Elizabeth referred to herself as Betty in a previous document and the Real Property Lister requires Elizabeth to clarify that she is AKA Betty

Appeals Court Solution	Corrective Instrument Solution
Execution of a new deed or the commencement of a lawsuit to confirm the name.	A person with knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which corrects or clarifies a party's name, including the spelling of the name; a first or middle name or initial; a name suffix, such as senior or junior; alternate names by which the party is known; or a description of an entity as a corporation, company, or similar identifier.
	Proposed §§706.085(2)(b) and 706.085(1)(b)(1), Wis. Stats.

State Bar of Wisconsin Form 1-2003 <b>WARRANTY DEED</b>		 * 4 3 4 6 8 8 5 1 * <b>DANE COUNTY</b> <b>REGISTER OF DEEDS</b>
Document Number	Document Name	DOCUMENT # <b>4346885</b>
<b>THIS DEED, made between <u>Michael F. Rufflo and Jennifer L. Rufflo, husband and wife, and Dorothy A. Edwards, a married person.</u></b>		06/21/2007 07:34AM
("Grantor" whether one or more), and <u>Trianon Properties 2, LLC</u>		Trans. Fee: 750.00 Exempt #:
("Grantee" whether one or more).		Rec. Fee: 11.00 Pages: 1
Grantor for a valuable consideration, conveys to Grantee the following described real estate, together with the rents, profits, fixtures and other appurtenant interests, in <u>Dane</u> County, State of Wisconsin ("Property") (if more space is needed, please attach addendum): <u>Lot Eight (8), Block Six (6), Second Addition to Valley Subdivision, in the City of Sun Prairie, Dane County, Wisconsin.</u>		Recording Area Name and Return Address <u>Trianon Properties 2, LLC</u> <u>P.O. BOX 237</u> <u>Nashotah, WI 53058</u>
<div style="border: 1px solid black; padding: 5px; display: inline-block;">             The deed incorrectly describes the property as the homestead of the grantor           </div>		<b>282-0911-324-4078-8</b> Personal Identification Number (PIN) The <u>is</u> homestead property. (is) (is not)

Appeals Court Solution	Corrective Instrument Solution
Execution of a new deed or the commencement of a lawsuit to confirm the homestead status.	A person with knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which correct or clarifies whether the property is a homestead.  <i>Proposed §§706.085(2)(b) and 706.085(1)(b)(4), Wis. Stats.</i>




The notary failed to indicate the date on which the document was acknowledged

**ACKNOWLEDGMENT**

State of WISCONSIN  
County of Shushaga

This instrument was acknowledged before me on [redacted] by  
Brian G Jankuski and Lynette R Jankuski.



Aimee A Marowski  
Signature of Notary Public

Aimee Marowski Best  
Printed Name

Closing Coord. / Notary Public  
Title or Rank

My Commission Expires: 3-7-13

This instrument was drafted by:  
2371 Hillside Lane  
Green Bay, WI 54302

Appeals Court Solution	Corrective Instrument Solution
Execution of a new document or the commencement of a lawsuit to confirm the date on which the document was acknowledged.	<p>A person with knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which adds or clarifies facts relating to the acknowledgment or authentication.</p> <p><i>Proposed §§706.085(2)(b) and 706.085(1)(b)(10), Wis. Stats.</i></p>

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_

Stewart D. Hofmann (Seal)  
Stewart D. Hofmann -Borrower

\_\_\_\_\_

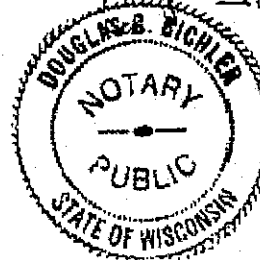
Vanessa R. Hofmann (Seal)  
Vanessa R. Hofmann -Borrower

STATE OF WISCONSIN, Ozaukee

The foregoing instrument was acknowledged before me this  
by Stewart D. Hofmann

County ss:

June 2, 2009



My Commission Expires: 5/8/2011

The notary failed to indicate that  
Vanessa also acknowledged the  
document

Douglas B. Eichler  
Notary Public, State of Wisconsin

This instrument was prepared by

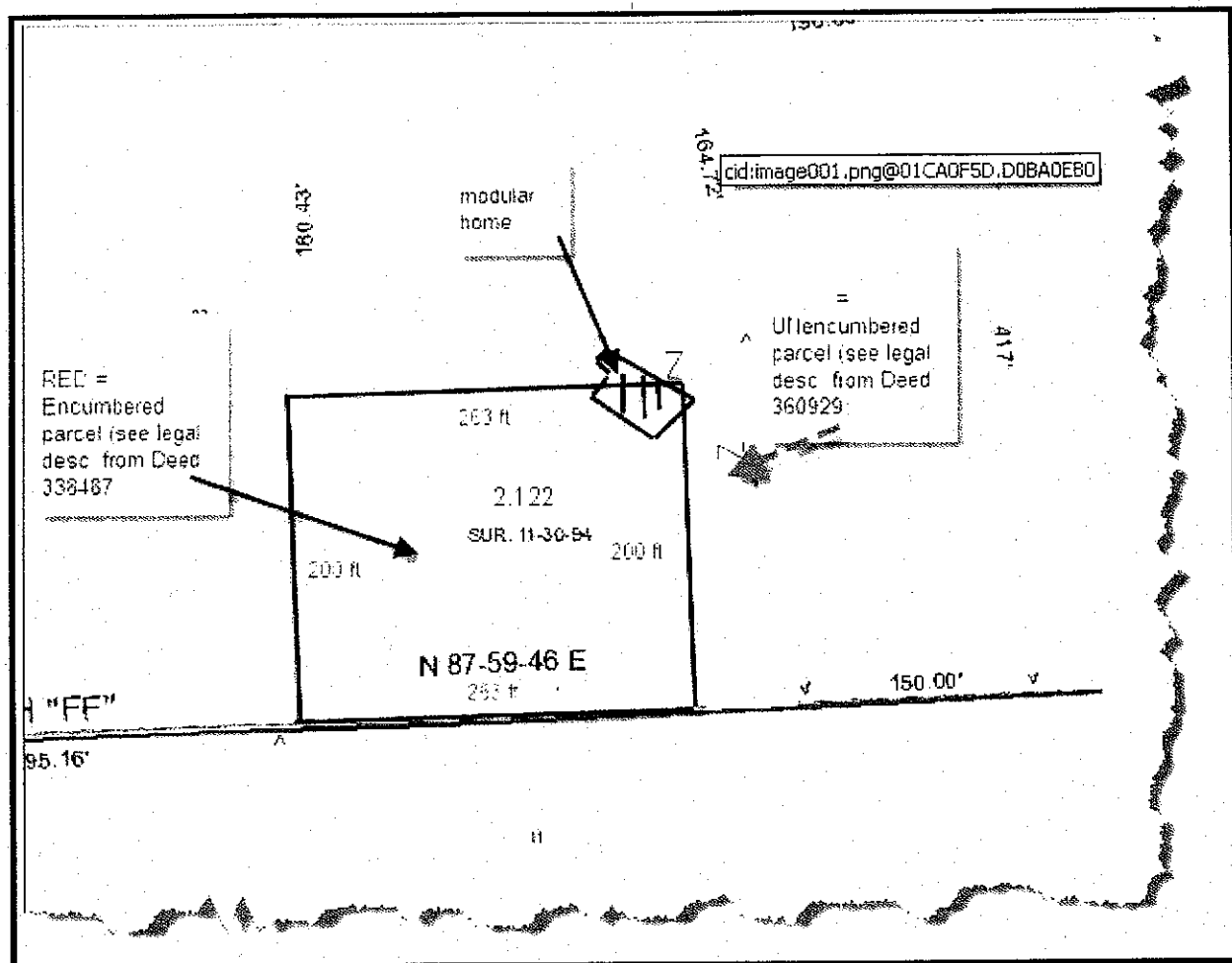
#### Appeals Court Solution

Execution of a new document or the commencement of a lawsuit to confirm that both parties acknowledged the document.

#### Corrective Instrument Solution

A person with knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which adds an acknowledgment or authentication.

Proposed §§706.085(2)(b) and 706.085(1)(c), Wis. Stats.



#### Appeals Court Solution

Execution of a new mortgage signed by the Grantor (borrower) to add the additional lands, or the commencement of a lawsuit to judicially reform the mortgage to add the parcel in question.

#### Corrective Instrument Solution

The mortgage did not encumber all of the lands that the parties (lender and borrower) intended to encumber. Grantor (borrower) must sign the correction instrument adding the additional lands to the mortgage which also correctly conveyed other lands.

*Proposed §706.085(2)(b)(3)(b), Wis. Stats.*



## Memorandum

**To:** Members, Senate Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions Committee

**From:** Tom Larson, Director of Regulatory and Legislative Affairs

**Date:** March 10, 2010

**Re:** SB 587 – Changes to Wisconsin's Commercial Lien Law

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The Wisconsin REALTORS® Association supports SB 587, legislation that seeks to make Wisconsin's Commercial Lien Law more effective by modifying the current process for filing a lien.

**Overview** -- Wisconsin's Commercial Lien Law authorizes real estate brokers in a commercial real estate transaction to place a lien on a property to insure payment of the commission in both purchase/sale transactions and lease transactions. While the requirements for filing a lien in purchase/sale transactions have some similarities to the lien requirements in lease transactions, they also have some significant differences.

### Purchase and Sale Transactions

**Current Law** -- In a purchase/sale transaction, a real estate broker is authorized to place a lien on property prior to closing to ensure payment of the commission at closing. In other words, this law provides real estate brokers with an insurance policy to make sure they receive any commission owed at closing.

To "perfect" the lien (or make the lien legally enforceable) in a purchase/sale transaction, the broker must file two separate documents with the register of deeds for the county in which the property is located:

- (1) an intent of a possible lien, which must be filed 30 days prior to closing; and
- (2) the actual lien, which must be filed 3 days before closing.

If the broker fails to file the necessary paperwork and does not get paid at closing, the broker can pursue a breach of contract claim. However, if the breach of contract claim is against the seller, the seller no longer owns the property and the broker will have to find some other means through which to enforce a favorable judgment from a court.

**The Problem** -- Wisconsin's Commercial Lien Law is the only lien law that requires the filing of an "intent of a possible lien" 30 days prior to the time payment of a commission or other compensation is owed and this requirement has made the law ineffective from a practical standpoint because:

(a) brokers are required to give notice of intent so early, in some cases before they sign the lease listing or management agreement (§ 779.32(3)(c)), and in other cases just too far in advance (§ 779.32(3)(a) & (b)).

(b) commercial brokers generally are unaware that their client will not be paying them until right before or at closing; and

(c) filing such a notice of potential lien could jeopardize the transaction or the broker's relationship with the client

**The Solution** – To address these problems, Senate Bill 587 makes the following changes to the current commercial lien law:

- Replace the "Notice of Intent of a Possible Lien" requirement" with a "Notice of Interest" requirement. Like the "Notice of Intent of a Possible Lien," a "Notice of Interest" must be filed with the Register of Deeds at least 30 days in advance of a closing. The "Notice of Interest" will be valid for up to 24 months from the date of filing.
- To make sure the property owner is aware of the broker's lien rights, require all commercial listing contracts, buyer agency agreements, and tenant representation agreements related to commercial real estate to include a disclosure statement to inform the consumer that brokers have the authority to file a lien if the commission is not paid.
- Finally, authorize the Broker to file a lien at any time up to 30 days after the date of closing.

**Current Process vs. New Process** – Here is a comparison of the process for filing a commercial lien law under current law and the changes proposed by Senate Bill 587:

- Current process
  - Must file notice of intent to file a possible lien with register of deeds at least 30 days prior to closing
  - Must file actual lien with register of deeds at least 3 days prior to closing
  - Must send a copy of the lien to the property owner within 72 hours after filing
- New process
  - Must provide notice of lien rights in the listing agreement, buyer agency agreement, etc.
  - Must provide a notice of interest with the register of deeds at least 30 days before the deed or other conveyance
  - Must file the lien within 30 days after the closing documents are recorded
  - Must send a copy of the lien to the property owner within 72 hours after filing

## **Lease and Management Transactions**

**Current Law** – In a lease transaction, a real estate broker who is not paid a commission that is owed may place a lien on a property AFTER the lease agreement is signed or the commission or fee is owed. See Wis. Stat. §§ 779.32(2)(c) and (4)(a)2. This authority to

place a lien on the property after a commission is owed is similar to the authority provided under Wisconsin's contractor lien law.

To perfect the lien in a lease transaction, the broker must file two separate documents with the register of deeds for the county in which the property is located:

- (1) notice of intent to file a lien before the date that the lease or management agreement is entered into; and
- (2) the actual lien, which must be filed 90 days after the later of the following:
  - a. the date the broker earns a commission or compensations, or
  - b. the date that the broker receives notice that he/she has earned a commission or compensation

The Problem – Similar to purchase/sale transactions, requiring a broker to file a "notice of intent" before the lease is entered into is problematic because this requirement can strain a broker's relationship with a client, suggesting that the broker does not trust the client to honor his/her financial obligations under the lease or management agreement.

The Solution -- To address this problem, Senate Bill 587 makes the following changes to the current commercial lien law:

- Replace the "Notice of Intent of a Possible Lien" requirement with a disclosure statement in all commercial listing contracts, buyer agency agreements, and tenant representation agreements. The disclosure statement will inform the consumer that brokers have the authority to file a lien if the commission is not paid.

Current Process vs. New Process -- Here is a comparison of the process for filing a commercial lien law under current law and the changes proposed by Senate Bill 587:

- Current process
  - Must file notice of intent to file a possible lien with register of deeds at least one day before the lease is entered into.
  - Must file actual lien with register of deeds at least 90 days after commission is earned
  - Must send a copy of the lien to the property owner within 72 hours after filing
- New process
  - Must provide notice of lien rights in the listing agreement, buyer agency agreement, etc.
  - Must file the lien within 90 days after the commission is earned
  - Must send a copy of the lien to the property owner within 72 hours after filing

Summary of Changes – Here is a complete summary of all the changes made to the commercial lien law by Senate Bill 587:

- Replaces the "Notice of Intent of a Possible Lien" requirement" with a "Notice of Interest" requirement for all purchase/sale transactions. (Note – for

lease/management transactions, the "Notice of Intent of a Possible Lien" requirement is eliminated.) Like the "Notice of Intent of a Possible Lien," a "Notice of Interest" must be filed with the Register of Deeds at least 30 days in advance of a closing. The "Notice of Interest" will be valid for up to 24 months from the date of filing.

- To make sure the property owner is aware of the broker's lien rights, require all commercial listing contracts, buyer agency agreements, and tenant representation agreements related to commercial real estate to include a disclosure statement to inform the consumer that brokers have the authority to file a lien if the commission is not paid.
- Authorizes the broker to file a lien at any time up to 30 days after the date of closing. (Keeps current law with respect to lease, (tenant representation agreements – see below) and other management agreements – 90 days after commission is owed)
- Clarifies that commercial lien law applies to "tenant representation agreements." Current law uses the terms "lease" and "management agreement."
- Removes the requirement to file an intent of possible lien 30 days prior to closing. Instead, all commercial listing contracts, buyer agency agreements, tenant representation agreements, lease listings and written agreements for management of commercial real estate would be required to include a disclosure statement to inform the consumer that brokers have the authority to file a lien if the commission is not paid.
- Clarifies the lien can be filed to recover commission "or compensation," which is intended to cover fees often owed under buyer agency/ tenant representation agreements, lease listings or management agreements. Current law indicates that a lien can be filed only to recover a commission.
- Expands the list of entities that can handle escrow related to commission disputes to include "mutually-agreed-upon third parties."
- Creates an enforcement provision indicating that commercial lien can be enforced through the same process as construction liens (Wis. Stat. sec. 779.09)
- Clarifies that if brokers sign a written lien waiver they waive right to the lien (see Wis. Stat. sec. 779.03(1)).
- Allows title insurance companies to correct a variety of recording errors on deeds, mortgages, easements, etc., without having to commence a court action or gather all of the parties and re-execute the faulty document. (Restores law that existed prior to *Smiljanic v. Niedermeyer*, 2007 WI App 182, 737 N.W.2d 436.)



Jim Villa, *President & CEO*  
Scott T. Furmanski, *Chairman*  
James T. Barry, III, CCIM, SIOR, *Chairman-Elect*  
John P. Czarnecki, *Secretary*  
Stephen B. Provancher, *Treasurer*  
Barry S. Chavin, SIOR, *Past Chairman*

March 10, 2010

**Committee on Veterans and Military Affairs, Biotechnology, and Financial Institutions**  
**Senate Bill 587**

Chairman Sullivan and Honorable Senators

Thank you for this opportunity to share with you today our support of Senate Bill 587; my name is Jim Villa and I am the President & CEO of the Commercial Association of REALTORS® Wisconsin, CARW. CARW is a trade association with over 600 commercial REALTORS® and related commercial real estate industry professionals. CARW is an overlay board member of the Wisconsin REALTORS® Association which represents over 15,000 in Wisconsin, and the National Association of REALTORS®, the largest business trade organization in the world with over 1.2 million members.

As you likely already know, the commercial real estate industry is, at best, tenuous, and the potential for a turnaround is not generally viewed until 2011 or 2012. In the meantime, the lack of available credit and the pressure on landowners to renegotiate both with their banks and their tenants is taking their toll in a fashion, that while not seen in screaming headlines like that of the home mortgage meltdown, has the potential to have a dragging impact on our economic recovery.

With that as a backdrop we are here today to ask for your help in repairing a well-intentioned law passed in 1997 that aims to provide commercial REALTORS® with a tool to recover commissions they are owed without costly and lengthy litigation. Wisconsin's Commercial Lien Law is, in its current state, unfortunately, a toothless tiger.

So what is the problem?

We believe based on our research that Wisconsin is currently the only state that requires REALTORS® to file a notice of intent to file a lien 30 days in advance of closing on a property in which they are owed a commission.

In many cases this requirement to file a notice of intent to file a lien comes at a very fragile time in the relationship between the REALTOR® and the client – the law requires the REALTOR® to signal to the client that although nothing has happened they believe that they may be wronged in the future. In the case of a lease transaction, it's actually possible that due to timing that the requirement to file the intent to file a lien would be required to be filed even BEFORE the REALTOR® has signed a contract to represent the client.



The second problem with the current law is that it requires a commercial REALTOR®, assuming they have correctly and timely filed their intent to file a lien, to file that lien at least 3 days before the closing. Senators, the reality is that often the commercial REALTORS® don't know they are being denied their commission until the day of closing, or worse, they find out that the closing happened without them.

Here is the solution that CARW and WRA are proposing:

- First, replace the "Notice of Intent of a Possible Lien" requirement with a "Notice of Interest" requirement. Like the first, the Notice of Interest must be filed with the Register of Deeds at least 30 days in advance of a closing. The Notice of Interest will be valid for up to 24 months from the date of filing. The Notice of Interest will ensure that all parties at a closing transaction are aware of a potential dispute over a commission owed and the potential impact on their position in the transaction. We believe firmly that in the case of a buyer agency agreement, for example, that the lending institution and the buyer are not going to want to proceed until the cloud is removed from the title.
- Second, require all commercial listing contracts, buyer agency agreements and tenant representations related to commercial real estate include a disclosure statement. This ensures that the consumer is aware that the broker that they are about to enter into a contractual relationship with has the authority to file a lien if the commission they are owed is not paid.
- Lastly, allow the commercial REALTOR® up to 30 days after a closing to file a lien for any commissions owed. Again, this ensures that should all parties at a closing proceed without resolving the potential commission owed as identified in the Notice of Interest that a REALTOR® still has recourse for their commission.

What you have before you Senators is the result of a collaborative effort by impacted parties to give some true authority to a commercial lien should it become necessary for a REALTOR® to deploy this device to recover commission owed to him or her. CARW and WRA have worked closely with the Bankers Association, the Land Trust Association and our title insurance member firms, as well as the Register of Deeds, to ensure that the proposal you have before you will work, will fairly represent those that it aims to protect, and that all parties involved can work within the confines of its directives to accomplish its goals without becoming a hindrance to commerce or a threat to consumer protection.

Chairman Sullivan, Honorable Senators, we are asking you simply to update a law that while well meaning has not served those it was intended to, in the manner it was intended to.

Again, on behalf of our membership, the WRA and NAR, thank you for placing SB 587 on your agenda today and for allowing me to appear before you. We ask that you recommend SB 587 to the full Senate for approval.

With that I am pleased to yield to Tom Larson, the Vice President for Regulatory Affairs on behalf of the Wisconsin REALTORS® Association.